IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

WP(C).No. 20122 of 2005(U)

AGAINST THE ORDER DATED 10/05/2005 IN EP.31/01 IN OS.137/1999 of FAMILY COURT,KOLLAM

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PETITIONERS:

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1. KARTHYAYANI AMMA, `VASANTHI',
   MARUKULANGARA CO-OPERATIVE BANK,
   IRINGALAKKUDA, THRISSUR.

2. RAVIKUMAR,
   LEKSHMI BHAVAN, THIRUMMULAVARAM,
   KOLLAM.

3. SASIKUMAR,
   QUARTERS NO.1, HOLIGHOST MISSION HOSPITAL,
   MUTTUCHIRA, KOTTAYAM.

*__ADDL. PETITIONERS 4 TO 9 ARE IMPLEADED__

4. LALITHA B.MENON, VASANTHI, KAREELA KULANGARA,
   IRINGALAKUDA.

5.GIRIJA PARAMESWARAN, KRISHNA KRIPA,
   DECENT JUNCTION P.O., KOLLAM.

6.GEETHA VENUGOPAL, SUDHARMA, KRISHNA GARDENS,
   GOLF CLUB ROAD, KOWDIAR, THIRUVANANTHAPURAM.

7.LALITHA T.K., THITTAVILA VEEDU,
   DECENT JUNCTION P.O., KOLLAM.

8.AMBILY T.K., THITTAVILA VEEDU,
   DECENT JUNCTION P.O., KOLLAM.

9.MANJU.T.K., THITTAVILA VEEDU, DECENT JUNCTION P.O.,
   KOLLAM.

*ADDL.PETITIONERS 4 TO 9 ARE IMPLEADED AS PER THE ORDER IN I.A.NO.17912/05 DT.26.6.07

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:

1.INDULEKHA, D/O.VIKRAMAN NAIR,
VELIVILAKATHU VEEDU, CHIRAYINKEEZHU P.O.,
THIRUVANANTHAPURAM DIST.

***ADDL.R2 TO R5 IMPLEADED**

2.MOHANKUMAR, THITTAVILA VEEDU,
DECENT JUNCTION P.O., KOLLAM.

3.SASIKUMAR, QUARTERS NO.1,
HOLIGHOST MISSION HOSPITAL,
MUTTUCHIRA, KOTTAYAM.

4.RAVIKUMAR, LEKSHMI BHAVAN,
THIRUMULAVARAM, KOLLAM.

5.DR.T.K.SREEKUMAR, LECTURER,
DEPARTMENT OF CHEMISTRY AND POLI-CHEMISTRY,
FATHIMA MATHA NATIONAL COLLEGE, KOLLAM,
RESIDING AT THITTAVILA, CHANDAPUR, DECENT JUNCTION,
KOLLAM.

ADDL.R2 TO R5 ARE IMPLEADED AS PER THE ORDER IN I.A.17912/05 DATED 26.6.2007.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C) No.20122 of 2005

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Dated: 4th July, 2007

JUDGMENT

Under challenge in this Writ Petition is Ext.P6 order passed by the Family Court, Kollam in E.A.No.150/04 in E.P.No.31/01 in O.S.No.137/1999. Under Ext.P6, the Family Court has dismissed an application filed by the petitioners who were judgment-debtors 2 to 4 for acceptance of the attached property as sufficient security and for a declaration that the third condition imposed by this court under Ext.P1 for setting aside the ex parte decree has been complied with. Under Ext.P6, the respondent-decree-holder is permitted to continue with the execution by proclaiming and selling the properties mentioned in the sale proclamation. The petitioners submit that they were defendants 2 to 4 in the suit on the files of the Family Court, Kollam. The suit was filed by the respondent against four defendants. The first defendant was the husband of the respondent. The petitioners were the mother and brothers of the first defendant. According to the petitioners, it was without serving them with summons that the suit was decreed ex parte. They came to know about the ex parte decree only when they received notice of the execution proceedings. The petitioners filed petition to set aside the

ex parte decree and for condonation of delay caused in the matter. Both the petitions were dismissed. The petitioners filed MAT. Appeal against those orders before this court. This court allowed the appeals by passing Ext.P1 judgment imposing three conditions. The first condition was that a sum of Rs.10,000/- shall be paid to the Advocate for the respondent as costs. The second condition was that one-third of the decree debt shall be deposited in cash before the court below. The third condition is relevant in this case and the same was that sufficient security shall be furnished for the balance decree debt. The petitioners submit that the first condition was complied with and upon review petition filed, the second condition was modified. For satisfying the third condition, the petitioners filed a petition before the Family Court, Kollam claiming that the property already under attachment is sufficient for satisfying the decree. The Family Court dismissed that application stating that the Kollam Court does not have jurisdiction. The petitioners approached this court seeking clarifications. This court vide order in I.A.No.689/05 clarified that the Family Court, Kollam has jurisdiction. However, in the first posting date after production of this court's clarification order, the Family Court, Kollam passed Ext.P6 order dismissing the application submitted by the petitioners.

Impugning Ext.P6 on various grounds, the petitioners pray that Ext.P6 be quashed and seek a declaration that the property already under attachment is sufficient for satisfying the third condition imposed under Ext.P1.

2. A very detailed counter affidavit has been filed by the respondent justifying Ext.P6. Several documents, Exts.R1 to R6 have been produced along with the counter affidavit.

3. The first petitioner died during the pendency of the Writ Petition and considering an impleadment application, some of her legal heirs were impleaded as additional petitioners while some others were impleaded as additional respondents.

4. I have heard the submissions of Mr.Bechu Kurian Thomas, learned counsel for the petitioners and also those of Mr.P.Gopakumaran Nair, counsel for the respondents.

5. Mr.Bechu Kurian Thomas submitted that the balance amount due under the decree will be only Rs.5 lakhs . The respondent had already attached immovable properties of the petitioners and value of those properties is more than sufficient to cover the entire decree debt. This aspect of the matter was not properly considered by the court below. Mr.Bechu Kurian Thomas submitted that after attaching

properties worth crores, it is not at all fair on the part of the respondent to insist that further property should be offered by way of security.

6. Resisting the submissions of Mr.Bechu Kurian Thomas, Mr.Gopakumaran Nair submitted that proceedings are presently on before the Debts Recovery Tribunal for sale of the properties which are subject matter of the attachment. There are revenue recovery proceedings also. The actual market value of the property under attachment will be very small. It will not be possible for the respondent to recover the probable decree debt unless valuable and meaningful security is offered. There is no infirmity about Ext.P6 warranting correction by this court under the supervisory jurisdiction.

7. Having anxiously considered the rival submissions in the light of the rival pleadings and the materials placed on record by the parties, I am of the view that there is justification for affording an opportunity to the petitioners for convincing the Family Court that the property under attachment itself will be sufficient for discharging the prospective decree debt. I do find that the petitioners did not get sufficient opportunity. Opportunity should alternatively be granted to the petitioners for furnishing alternate security. Thus allowing the

Writ Petition, I set aside Ext.P6 and direct the Family Court, Kollam to reconsider the issue covered by Ext.P6 after affording sufficient opportunity to the petitioners for convincing the Family Court by producing whatever materials available with them that the attached property itself is sufficient security for the balance decree debt. The Family Court shall at any rate permit the petitioners to furnish alternate security. The whose exercise should be completed and fresh orders should be passed by the Judge of the Family Court within three months of receiving copy of the judgment.

srd **PIUS C.KURIAKOSE, JUDGE**